

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1979 of 1995 to FA 1985/95

with

CROSS OBJECTION No 165 of 1999 to 171/99

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT & 2

Versus

JAMNABEN PARAGBHAI

APPEARANCE :

1. First Appeal No. 1979/95 to 1985/95
MR M.R.RAVAL, AGP for appellants
MR JITENDRA M PATEL for Respondents
2. CROSS OBJECTION No 165 of 1999 to 171/99
MR MR RAVAL AGP for appellants
MR JITENDRA M PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
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Date of decision: 08/03/99

ORAL JUDGEMENT

The appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as "the Act") read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated January 31, 1995, rendered by the learned Extra Assistant Judge, Vadodara, in Land Reference Case Nos.30/89 to 36/89. The respondents have filed Cross Objections under Order 41 Rule 22 of the Code of Civil Procedure claiming enhanced compensation.

2. As common question of facts and law arise in the appeals as well as in the Cross Objections, they are disposed of by this common judgment. The proposal was made by the Executive Engineer, Narmada Yogana, Canal Division No.2/5, Dabhoi, Dist : Vadodara, to acquire the lands of village Undi for the purpose of Narmada Yogana, Miyagam Branch. The said proposal was scrutinized by the Special Land Acquisition Officer and thereafter, notification under Section 4 (1) of the Act was published on May 31, 1984, wherein the lands of Undi belonging to respondents were specified. The record indicates that thereafter amended notification under Section 4 (1) of the Act was published on July 19, 1985. Pursuant to the notice issued on the respondents under Section 4 (1) of the Act, they filed their objections before the Land Acquisition Officer. The Land Acquisition Officer submitted his report under Section 5 (A) (2) of the Act. After consideration of said report, a declaration under Section 6 of the Act was made which was published in the Government gazette on September 20, 1985. The respondents were served with the notice under Section 9 of the Act. The respondents appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.1,50,000/per hector for their acquired lands. The Land Acquisition Officer after considering the material placed before him made the award under Section 11 of the Act on 20-2-86 fixing the market price of the acquired lands at Rs.3500/- per hector.

3. The respondents were of the opinion that the compensation awarded by the Land Acquisition Officer was inadequate, and therefore, they made applications under Section 18 of the Act before the Special Land Acquisition Officer requiring him to refer the applications to the District Court, Vadodara. The Special Land Acquisition Officer referred the applications to the District Court, Vadodara, which came to be numbered as Land Reference Cases Nos. 30/89 to 36/89. All the Land Reference Cases

were consolidated and evidence was led in the main Reference Case No.32/89. The respondents in the applications filed under Section 18 of the Act averred that the acquired lands were irrigated as well as fertile lands and they were raising 3 crops namely cotton, pulse (tuver) and Juvar in a year and getting income of Rs.10,000/- per bigha. It was also averred that village Undi was developed village wherein all the facilities were available. It was further averred that village Undi was at a distance of 6 kilometers from Taluka Sankheda and was connected with all the main villages of the Taluka by tar road. The respondents on the above averments claimed compensation at Rs.50,000/per hector. The appellants by filing their reply contended that the compensation awarded by the Land Acquisition Officer was just and adequate and the lands acquired are non-irrigated lands, and therefore, the respondents were not entitled to claim higher compensation and prayed that the Reference be dismissed. The respondents to substantiate the claim examined ;

1. Jamnaben Paragbhai at Exh.9,
2. Paragbhai Hargovindbhai Patel at Exh.11,
3. Nandkishor Naranbhai Patel at Exh.17.

The claimants also produced documentary evidence in the nature of price list of Agricultural Produce Market Committee, Bodeli, which indicates the prices of food grains prevailing in the year 1979-80 to 1985-86. The acquired body-appellants did not lead oral or documentary evidence before the Reference Court.

4. The learned Reference Judge after considering the oral as well as documentary evidence concluded that the evidence of the respondents showed that village Undi was situated at a distance of 5 kilometers from village Sankheda ; that the acquired lands of village Undi were fertile lands and the respondents were taking 3 crops in a year. The Reference Court concluded that the respondents were getting Rs.7,700/- per acre as agricultural income from the acquired land. However, the Reference Court held that the income as deposited by the respondent-Jamnaben was exaggerated and it should be taken at Rs.3500/ per bigha. The Reference Court deducted 1/3 as expenses for cultivation and deduced that the claimants were getting Rs.2334/- as net income per bigha. The Reference Court applied multiplier of 10 and concluded that the claimants were taking Rs.23,340/- per year as income out of the agricultural products. The Reference Court divided Rs.23,240/- by 2400 (1bigha=2400 square meters) and concluded that the claimants would be entitled to Rs.9.72 per square meters. Even though the Reference Court determined the market price of the

acquired land at Rs.9.72 per square meter it awarded an additional compensation of Rs.0.35 paise per sq. meter over and above the compensation of Rs.9.72 per sq.mt. which has given rise to the present appeals by the appellants. The respondents have claimed enhanced compensation at the rate of Rs.15/- per square meter by filing Cross Objections under Order 41 Rule 22 of C.P.C.

5. Learned A.G.P. Mr.M.R.Raval for the appellants has submitted that the award of the Reference Court is totally based on conjectures and guess work, and therefore, the determination of the market value of the acquired lands on the basis of yield deserves to be set aside. It is argued by learned A.G.P. Mr. M.R.Raval for the appellants that respondents had not produced any documentary evidence in the nature of extract of 7/12 to show that they were taking 3 crops in a year from the acquired lands. It is lastly submitted by the learned A.G.P. for the appellants that the Special Land Acquisition Officer had awarded just and adequate compensation to the respondents, and therefore, the appeals deserve to be allowed.

6. On the other hand, learned counsel for the respondents has submitted that the compensation awarded by the Reference Court is on a lower side as the respondents were taking 3 crops in a year and were getting Rs.7,700/- net income out of the yield. The learned counsel for the respondents has submitted that the Reference Court erred in assessing Rs.2334/- as net income of the acquired lands instead Rs.7,700/- as deposed by witness Jamnaben and Paragbhai. The learned counsel for the respondents has lastly submitted that the compensation awarded by the Reference Court was inadequate and the respondents may be awarded compensation at the rate of Rs.15/- per square meter, and therefore, the Cross Objections filed by the respondents deserve to be allowed.

7. The Supreme Court in the case of State of Gujarat and others vs. Rama Rana & Ors. 1997 (3) G.L.R. page 1954 has ruled as under :

" It is undoubtedly true that one of the methods of determination of compensation, in the absence of best evidence, namely, sale deed, is the realized value of the crop. Unfortunately, neither the claimants nor the Government took any step to adduce the best evidence. The Reference Court has accepted the evidence of the Sarpanch to be that of a reliable person. Therefore,

Court proceeds on that premise. The appropriate multiplier should be 10 years as settled by several judgments of this Court. Necessarily, 50 % of the net value towards cultivation expenses requires to be deducted. The award of the Reference Court as confirmed by the High Court stands set aside and the value of the crop as determined by the Reference Court at Rs.2050/- as average annual income stands upheld. Multiplier of 10 years should be applied and deduction of 50 % towards cultivation expenses should be made."

8. In the present case, neither respondents-claimants nor the acquiring body led any evidence with regard to sale deed or other evidence to enable the court to determine the market price of the acquired lands. In absence of other evidence for determination of market value of the acquired lands, the Reference Court had to rely upon the evidence led by the respondents with regard to the agricultural income derived from the acquired lands. The respondents led oral evidence with regard to yield they were getting from the acquired lands. The evidence of Jamnaben shows that the respondents were getting annual income of Rs.7700/- out of the agricultural produces raised on the acquired lands. As per the decision of the Supreme Court, 50 % is to be deducted as expenses of cultivation from the gross income. If the respondents were getting income of Rs.7,700/- from 3 crops raised from the agricultural lands, the net income would be Rs.3,850/- per Acre. If we apply the multiplier of 10, then the net income would be Rs.38,500/- per Acre. Therefore, the amount of Rs.38,500/- will have to be divided by 4046 (one acre is equivalent to 4046 sq.meters) for ascertaining value per meter. The net price of the lands would come to Rs.9.50 which is rounded off to the figure of Rs.10/- per sq.meter. Therefore, the market price of the acquired lands is determined at Rs.10/- per square meter on the relevant date i.e.. May 31, 1984 which is the date of publication of notification under Section 4 (1) of the Act. The Reference Court has awarded additional compensation of Rs.9.72 per sq. meter over and above the compensation of Rs.0.35 per sq.meter awarded by Land Acquisition Officer. The compensation awarded by the Reference Court, in our opinion, is just and reasonable which does not call for any interference in this appeals, and therefore, the appeals filed by the appellants deserve to be dismissed.

9. The respondents by filing Cross Objections have claimed compensation at the rate of Rs.15/- per sq.meter. As discussed in the earlier part of the judgment, the

claimants did not lead sufficient evidence before the Reference Court to justify their claim of compensation at Rs.15/- per sq.meter. In our opinion, the market value determined by the Reference Court is just and reasonable and the claimants are not entitled to higher compensation then awarded by the Reference Court. Therefore, we do not find any merits in the Cross Objections filed by the claimants and hence, they are dismissed.

10. As a result of the foregoing discussion, the Appeals and Cross Objections fail and are hereby dismissed. There shall be no order as to costs.

10. The office is directed to draw the decree in terms of this judgment.

8-3-99 (J.M.Panchal,J.) (M.H. Kadri,J.)

mithabhai